U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
BCIS, AAO, 20 Mass., 3/F
Washington, D.C. 20536

[redacted]

File: WAC 01 258 50646 Office: California Service Center Date: MAY 13 2003

IN RE: Petitioner:
Beneficiary: [redacted]

Petition: Immigrant Petition for Alien Worker as an Alien of Extraordinary Ability Pursuant to Section 203(b)(1)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(A)

IN BEHALF OF PETITIONER:

[redacted]

PUBLIC COPY

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Bureau of Citizenship and Immigration Services (Bureau) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of $110 as required under 8 C.F.R. § 103.7.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment based immigrant visa petition was denied by the Director, California Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner seeks classification as an employment-based immigrant pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A), as an alien of extraordinary ability in the sciences. The director determined the petitioner had not established the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability.

Section 203(b) of the Act states, in pertinent part, that:

> (1) Priority Workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):
>
> > (A) Aliens with Extraordinary Ability. -- An alien is described in this subparagraph if --
> >
> > > (i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,
> > >
> > > (ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and
> > >
> > > (iii) the alien's entry to the United States will substantially benefit prospectively the United States.

As used in this section, the term "extraordinary ability" means a level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the field of endeavor. 8 C.F.R. § 204.5(h)(2). The specific requirements for supporting documents to establish that an alien has sustained national or international acclaim and recognition in his or her field of expertise are set forth in the Service regulation at 8 C.F.R. § 204.5(h)(3). The relevant criteria will be addressed below. It should be reiterated, however, that the petitioner must show that he has sustained national or international acclaim at the very top level.

This petition, filed on July 5, 2001, seeks to classify the petitioner as an alien with extraordinary ability as a chemical engineer. The regulation at 8 C.F.R. § 204.5(h)(3) indicates that an alien can establish sustained national or international acclaim through evidence of a one-time achievement (that is, a major, international recognized award). Barring the alien's receipt of such an award, the regulation outlines ten criteria, at least three of which must be satisfied for an alien to establish the sustained acclaim necessary to qualify as an alien of extraordinary ability. The petitioner has submitted evidence that, counsel claims, meets the following criteria.

Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor.

The petitioner submitted a "Certificate of Achievement" from Union Carbide certifying that he met "all requirements for admission as an honorary member of the Pod Catalyst Skill Center." This certificate reflects institutional, rather than national or international, recognition. In response to the director's request for evidence, counsel acknowledged that "[t]here is no documentation of [the petitioner's] receipt of nationally or internationally recognized prizes or awards."

Documentation of the alien's membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields.

In order to demonstrate that membership in an association meets this criterion, the petitioner must show that the association requires outstanding achievement as an essential condition for admission to membership. Membership requirements based on employment or activity in a given field, a fixed minimum of education or experience, standardized test scores, grade point average, recommendations by colleagues or current members, or payment of dues, do not satisfy this criterion because participation, employment, education, experience, test scores and recommendations do not constitute outstanding achievements. In addition, a membership in an association that evaluates its membership applications at the local chapter level would not qualify. It is clear from the regulatory language that members must be selected at the national or international, rather than the local, level. Finally, the overall prestige of a given association is not determinative; the issue here is membership requirements rather than the association's overall reputation.

On appeal, counsel asserts that the petitioner's admission as an honorary member to Union Carbide's Pod Catalyst Skill Center satisfies this criterion. A letter from Dr. [redacted] Intellectual Asset Manager, Union Carbide Corporation, states:

> [The petitioner] spent a one-year sabbatical in my group in fiscal year 1993. [The petitioner] joined us under the auspices of a joint development program we sponsored with selected licensees. In this special program, highly qualified technical people were authorized to spend up to one year doing catalyst research in our section. The purpose of our program was to help train the candidates in how to conduct catalyst research and to foster good relations with our valued licensees. I also viewed this program as an opportunity to leverage the labor of well-qualified technologists in developing catalysts for our mutual benefit. [The petitioner] was the fourth person to participate in this program and the first from Hanwha Chemical. He was awarded this honor because he was the top scientist in the polyolefins division at Hanwha and because of his promise for future accomplishment in catalyst research.
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> * * *
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> [The petitioner] was awarded a "Certificate of Achievement" for his efforts at Union Carbide, an honor reserved for those who demonstrate the highest level of performance.

The petitioner's selection to participate in Union Carbide's catalyst research training program was based on a cooperative agreement between Han Yang Chemical Corporation (a subsidiary of the Hanwha Group) and Union Carbide rather than the petitioner's outstanding research achievements. Participation in a joint development agreement would not constitute membership in an association in the field requiring outstanding achievement.

We note Dr [redacted] statement that the petitioner was selected "because of his promise for future accomplishment in catalyst research." An assertion that the petitioner has a promising future would not establish eligibility in this matter, for the regulations clearly call for evidence that the petitioner already enjoys major success and acclaim.

In this case, the petitioner has offered no evidence of any association memberships that require outstanding achievements of their members, as judged by recognized experts at the national or international level.

> *Published materials about the alien in professional or major trade publications or other major media, relating to the alien's work in the field for which classification is sought. Such evidence shall include the title, date, and author of the material, and any necessary translation.*

In general, in order for published material to meet this criterion, it must be primarily about the petitioner and, as stated in the regulations, be printed in professional or major trade publications or other *major* media. To qualify as major media, the publication should have significant national distribution and be published in a predominant language. Some newspapers, such as the *New York Times*, nominally serve a particular locality but they qualify as major media because of significant national distribution, unlike small local community papers.

On appeal, counsel asserts that the scientific papers authored by the petitioner would satisfy this criterion. The petitioner's authorship of scholarly articles will be addressed below under a separate criterion. This criterion requires the petitioner to submit published materials written by others about him or his work. In this case, the petitioner has offered no evidence showing that he has been the subject of sustained major media coverage.

> *Evidence of the alien's participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specification for which classification is sought.*

In an occupation where "judging" the work of others is an inherent duty of the occupation, such as an instructor, teacher, professor or editor, simply performing one's job related duties demonstrates competency, and is not evidence of national or international acclaim.[1] Instead, a petitioner must

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[1] This is true with all duties inherent to an occupation. For example, publication is inherent to researchers. Thus, the mere publication of scholarly articles would not demonstrate national acclaim. The petitioner

demonstrate that his sustained national or international acclaim resulted in his selection to serve as a judge of the work of others in his field. Similarly, the judging must be on a national or international level and involve other accomplished professionals in the research field.

On appeal, the petitioner submitted a letter from [redacted] Professor, School of Engineering, Seoul National University, certifying that the petitioner served as a member of the Planning Committee for the Division of Catalysis and Reaction Engineering of the Korean Institute of Mechanical Engineers from 1996 through 1998. Professor [redacted] identifies himself as the former chairman of the Division of Catalysis and Reaction Engineering. He states:

> [The petitioner] actively participated in the planning of various activities and programs administered by the Division of Catalysis and Reaction Engineering. For this purpose, [the petitioner] was often involved with the evaluation of accomplishments of individual members of the Division.

Evaluating individual members of the Division, a seemingly routine duty for a member of the Division's Planning Committee, would be inherent to the petitioner's position at the Institute. Other than the statements provided by Professor [redacted] the petitioner offers no further evidence or information regarding his participation as a judge of the work of others. Section 203(b)(1)(A)(i) of the Act, however, requires extensive documentation of sustained national or international acclaim. Brief, vague claims carry far less weight in this matter than would contemporaneous first-hand documentation demonstrating the petitioner's participation as a judge.

The petitioner has offered no evidence showing that he judged the work of others at the national or international level (rather than at the divisional level of the Institute) or that he was selected as a judge based on his national or international renown.

> *Evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field.*

On appeal, the petitioner submits three witness letters. The letters provided briefly discuss the petitioner's activities and describe him as a capable chemical engineer, but they provide no information regarding how the petitioner's contributions have influenced the industry. The issue here is not the skill level or educational qualifications of the petitioner, but, rather, whether any of his past accomplishments would qualify as a contribution of major significance in the field of chemical engineering.

Dr. [redacted] states:

> [The petitioner] came to my group [as part of a one-year training program] with his own ideas for developing a specific Ziegler catalyst for use in Hanwha's fluid bed process. He had discovered a system that was capable of meeting the needs for specific polyolefin

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must demonstrate that the articles have garnered national attention, for example, by being widely cited.

products in the Korean marketplace. He was assigned his own laboratory and conducted most of his laboratory experiments by himself... The petitioner acquired patent coverage for this technology in the U.S. and Japan. [The petitioner] continued his research on return to Korea and subsequently demonstrated success at developing matallocene catalysts for Hanwha.

The petitioner submitted evidence showing that his work to develop a catalyst for ethylene polymerization resulted in a patent in the United States, Korea, and Japan. The fact that the petitioner's work has resulted in a patent carries little weight. Of far greater importance in this proceeding is the importance to the field of the petitioner's discovery. The granting of a U.S. patent documents that the innovation is original, but not every patented invention or innovation constitutes a contribution of major significance. According to statistics released by the U.S. Patent and Trademark Office ("USPTO"), which are available on its website at *www.uspto.gov*, the USPTO has approved over one hundred thousand patents per year since 1991. In 2001, for example, it received 345,732 applications and granted 183,975 patents. Therefore, we must consider the significance, not just the originality, of the petitioner's patented findings. The petitioner has offered no evidence demonstrating that his patents are widely recognized throughout the industry as contributions of major significance in the chemical engineering field.

[redacted] Chief Executive Officer, KUNICAL International Group, Burbank, California, states that he has received technical advice from the petitioner and known him for many years. [redacted] describes the petitioner as a "extra ordinarily qualified chemical engineer in the field of polyolefin catalysis." He further states: "Especially for the polyolefin catalyst, his accomplishments are referred to as 'unprecedented' among Japanese chemical engineers and scientists in the field of [the petitioner's] endeavor." A single witness statement to the effect that other chemical engineers and scientists view the petitioner's work as "unprecedented" cannot suffice to establish such impact, when the record lacks independent testimonials (from the Japanese chemical engineers and scientists themselves) or citation indices to support that claim.

An individual with sustained national or international acclaim should be able to produce ample unsolicited materials reflecting that acclaim. If the petitioner's contributions to catalyst technology and the polyethylene industry are not widely praised outside of his current and former collaborators, then it cannot be concluded that he enjoys sustained national or international acclaim as one who has reached the very top of the field. In this case, the petitioner has not demonstrated any specific scientific contributions that have been unusually influential and acclaimed within the chemistry field. While the witnesses have stated in general terms that the petitioner is a respected and highly skilled chemical engineer, there is no consensus that the petitioner enjoys a national reputation in the United States, Korea, Japan, or any other country. Rather, the petitioner appears to have earned a reputation only among his current and former colleagues. The absence of substantial independent testimony raises doubt as to the extent of the petitioner's acclaim.

Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media.

The very existence of published work by the petitioner is not dispositive. The Association of American Universities' Committee on Postdoctoral Education, on page 5 of its Report and Recommendations, March 31, 1998, set forth its recommended definition of a postdoctoral appointment. Among the factors included in this definition were the acknowledgement that "the appointment is viewed as preparatory for a full-time academic and/or research career," and that "the appointee has the freedom, and is expected, to publish the results of his or her research or scholarship during the period of the appointment."

Thus, this national organization considers publication of one's work to be "expected," even among researchers who have not yet begun "a full-time academic and/or research career." This report reinforces the Bureau's position that publication of scholarly articles is not automatically evidence of sustained acclaim; we must consider the research community's reaction to those articles. When judging the influence and impact that the beneficiary's work has had, the very act of publication is not as reliable a gauge as is the citation history of the published works. Publication alone may serve as evidence of originality, but it is difficult to conclude that a published article is important or influential if there is little evidence that other researchers have relied upon the beneficiary's conclusions. Frequent citation by independent researchers would demonstrate more widespread interest in, and reliance on, the beneficiary's work.

The record, however, does not contain citation records or other evidence to establish that the scientific community regards the petitioner's published work as especially significant. While heavy citation of the petitioner's published articles would carry considerable weight, the petitioner has not presented such citations here.

Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation.

In order to establish that the alien performed a leading or critical role for an organization or establishment with a distinguished reputation, the petitioner must establish the nature of his role within the entire organization or establishment and the reputation of the organization or establishment. Where an alien has a leading or critical role for a section of a distinguished organization or establishment, the petitioner must establish the reputation of that section independent of the organization as a whole.

Counsel asserts that the petitioner performed in a leading or critical role through his participation in the joint development program at Union Carbide. We cannot ignore Dr. [redacted] statement that the purpose of this program was to "help train the candidates in how to conduct catalyst research." The petitioner's "one-year sabbatical" at Union Carbide from 1993 to 1994 shows that the petitioner conducted research at Union Carbide, but there is no evidence to suggest that he fulfilled a leading or critical role within the company, especially since he was not a direct employee and his work was only temporary and contractual. The record contains no evidence to show that the petitioner has ever supervised or overseen other individuals at Union Carbide nor does it indicate that he has consistently exercised substantial control over the company's research programs or business decisions. A simple review of Dr. [redacted] qualifications, for example, shows that his role and responsibilities at Union

Carbide far exceeded those of the petitioner. Thus, the petitioner's impact on Union Carbide's research programs appears negligible.

In sum, we find that the petitioner's evidence falls short of establishing that the petitioner has performed in a leading or critical role for a distinguished organization, or that his involvement attracted sustained national or international attention.

> *Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field.*

Counsel states that the petitioner's position as Senior Research Associate for the Hanwha Group earned him the equivalent of $80,000 in 1993, twice that of the other Associate Director's of the Hanwha Group. The petitioner, however, has provided no documentary evidence to support counsel's claim. The assertions of counsel do not constitute evidence. *Matter of Laureano*, 19 I&N Dec. 1, 3 (BIA 1983); *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Even if we were to accept counsel's claim, the petitioner has offered no basis for comparison to show that his salary was significantly high "in relation to others in the field." In this case, the petitioner cannot limit comparison to his coworkers at the Hanwha Group. Furthermore, the statute and regulations require the petitioner's acclaim to be sustained. Simply providing the petitioner's salary amount from 1993 fails to demonstrate that he continues to earn compensation placing him at the top of his field. We note here that much of the evidence provided by the petitioner relates to events that occurred during the early to mid 1990's. The record is ambiguous regarding the petitioner's activities since that time, thus raising questions as to the petitioner's sustained acclaim.

The fundamental nature of this highly restrictive visa classification demands comparison between the petitioner and others in the field. The regulatory criteria describe types of evidence that the petitioner may submit, but it does not follow that every researcher who has obtained a patent, or who has earned the respect of a few colleagues, is among the small percentage at the very top of the field. While the burden of proof for this visa classification is not an easy one to satisfy, the classification itself is not meant to be easy to obtain; an alien who is not at the top of his or her field will be, by definition, unable to submit adequate evidence to establish such acclaim. This classification is for individuals at the rarefied heights of their respective fields; an alien can be successful, and even win praise from well-known figures in the field, without reaching the top of that field.

The documentation submitted in support of a claim of extraordinary ability must clearly demonstrate that the alien has achieved sustained national or international acclaim, is one of the small percentage who has risen to the very top of the field of endeavor, and that the alien's entry into the United States will substantially benefit prospectively the United States. The petitioner in this case has failed to demonstrate that he meets at least three of the criteria that must be satisfied to establish the sustained acclaim necessary to qualify as an alien of extraordinary ability.

Review of the record does not establish that the petitioner has distinguished himself as a chemical engineer to such an extent that he may be said to have achieved sustained national or international acclaim or to be within the small percentage at the very top of his field. The evidence is not persuasive that the petitioner's achievements set him significantly above almost all others in his field at the national or international level. Therefore, the petitioner has not established eligibility pursuant to section 203(b)(1)(A) of the Act and the petition may not be approved.

The burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.